

**IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE**

STATE OF TENNESSEE, *ex rel.*)
PAUL G. SUMMERS, ATTORNEY)
GENERAL,)

Plaintiff,)

v.)

No. _____

CONSUMER DEPOT, LLC and MARTIN)
RANDOLPH FIKE, individually and)
collectively d/b/a AUCTION DEPOT,)
BARGAIN DEPOT, CONSUMER DEPOT,)
FACTORY DEALZ, SURPLUS DEALZ,)
RETURN DEALZ, auctiondepot99,)
auctiondepot-tn01, bargaindepot04,)
bargaindepot05, bargainuniverse05,)
factorydealz, returndealz04, returndealz05,)
software-universe, surplusdealz04, ubid-it,)
surplusdealz05, swdiscounters, techgraveyard,)
youbid2003 and www.consumerdepot.com, and)
mr-appliance.)

Defendants.)

**PLAINTIFF, STATE OF TENNESSEE’S
MOTION FOR TEMPORARY INJUNCTION AGAINST
UNFAIR AND DECEPTIVE ACTS OR PRACTICES**

The State of Tennessee (“State”), by and through Attorney General Paul G. Summers (“Attorney General”), and on behalf of and at the request of the Division of Consumer Affairs of the Department of Commerce and Insurance, moves this Court pursuant to Section 47-18-108(a) of the Tennessee Consumer Protection Act of 1977¹ for a statutory injunction temporarily enjoining defendants Consumer Depot, LLC and Martin Fike, their officers, directors,

¹ Tenn. Code Ann. §§ 47-18-101 *et seq.*

employees, agents, successors and assigns, and other persons in active concert or participation with the Consumer Depot, LLC who receive actual notice of the this temporary injunction, from engaging, directly or indirectly, in any acts which are unfair or deceptive to consumers, including, but not limited to, the following:

- (A) Advertising, directly and by implication, that a specific product is being offered for sale, but delivering a different product;
- (B). Advertising, directly and by implication, that items are being sold as “new,” but delivering items that are refurbished, used or damaged;
- (C). Advertising, directly and by implication, that products are “tested,” “inspected,” or otherwise checked by trained personnel, but delivering items that are broken, defective or incomplete;
- (D). Advertising, directly and by implication, that merchandise is functional, but delivering merchandise that Defendants know, or should have known is defective;
- (E). Advertising, directly and by implication, that products are in good cosmetic shape, but delivering items that are broken, scratched, dirty, or that Defendants know, or should have known, are empty;
- (F). Advertising, directly and by implication, that products “work great,” but delivering items that do not work or do not function properly;
- (G). Advertising, directly or by implication, that certain components or hardware is included with an item, but delivering those items without the advertised components or hardware;
- (H). Advertising or otherwise representing that products are covered by guarantees or manufacturer’s warranties, when, in fact, they are not;
- (I). Advertising software without disclosing that the software has already been opened and registered to someone else, and thus, is not legally useable;
- (J) Obstructing and evading legitimate return attempts and failing to provide meaningful responses and/or customer service for legitimate consumer complaints, questions and returns; and
- (K). Retaliating against consumers who file eBay complaints by, *inter alia*, posting negative feedback on eBay against such consumers.

For the purposes of this Motion: the terms “advertise” or “advertised” shall be deemed to

include the terms “represent” or “represented,” “promote” or “promoted,” and “market” or “marketed;” and the terms “goods,” “products,” “product,” or “merchandise” shall mean tangible chattels, i.e. personal property, sold primarily to individuals for personal, family, or household purposes.

In support of this Motion, the State relies upon the contemporaneously filed Memorandum of Facts and Law in Support of Motion for Temporary Injunction, and Volumes 1 and 2 of the Exhibits to Memorandum of Facts and Law. As more fully set forth in the attached Exhibits and the Memorandum, defendants Consumer Depot, LLC and Martin Fike have engaged in unlawful commercial conduct by engaging in a course of deceptive advertisement at the expense of numerous consumers in Tennessee and throughout the country.

THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF FILED BY THE PLAINTIFF IN THIS CASE.

Respectfully submitted by:

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